

UNITED STATES COAST GUARD
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D. C.

PAUL A. YOST, Commandant, United States Coast Guard,

GEORGE FRANCIS BLAKE, Appellant.

ORDER DENYING MOTION

In an answer opposing the Commandant's motion, the respondent, by counsel, asserts that a timely notice from the Commandant's decision, received December 19, 1988, was filed on December 27, 1988, but through inadvertent error it was directed to the Commandant rather than to the Board.² An amended notice was served

(a) A party may appeal from the Commandant's decision sustaining an order of revocation, suspension, or denial of a license, certificate, document, or register in proceedings described in §825.1, by filing a notice of appeal with the Board within 10 days after service of the Commandant's decision upon the party or his designated attorney. Upon good cause shown, the time for filing may be extended."

²Although the Commandant suggest that the instant appeal should be dismissed not only because it was late but also because the Commandant was not served with a copy of the notice, certificates of service filed both with the original notice (sent directly to the Commandant) and an amended notice (correctly

on January 6, 1989, after the original notice, which easily could have been, but was not, forwarded to the Board, was returned to appellant's counsel.

We think appellant has established good cause for extending his time for filing a notice of appeal through January 6, 1989, the date the amended notice was filed. Appellant's original notice of appeal, albeit misdirected, was timely and, notwithstanding counsel's mistake, the Commandant received notice of appellant's intent to appeal his decision within the time frame contemplated by our rules. In addition, given the absence of any advice in the Commandant's decision either as to the availability or procedure for attaining further administrative review and the lack of information in the Coast Guard's regulations (see 46 CFR §5.713(a)) as to where a notice of appeal to the Board should be sent, we are not persuaded that counsel's misdirection of the original notice should be deemed inexcusable.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Commandant's motion to dismiss is denied, and
2. The Coast Guard's reply brief shall be due for filing 30 days after the service date of this order.

KOLSTAD, Acting Chairman BURNETT, LAUBER, NALL and DICKINSON, Members of the Board, concurred in the above order.

directed to the Board's docket clerk) indicate that copies of both were mailed to him. It does not appear from the certificates, however, that those mailings bore the correct routing symbol for the Commandant. We assume that they would nevertheless ultimately reach his office.